IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Review Application No. 12-C of 2009 and
C.M. No. 2466-C of 2009 in
Regular Second Appeal No. 597 of 2007
Date of Decision : July 24, 2009

Madan Lal

....Appellant/Applicant

Versus

Rajiv Arora and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Surinder Mohan Sharma, Advocate
for appellant-applicant.

T.P.S. MANN, J.

Suit for declaration filed by the applicant that he was owner of plot No. 609, Sector 8, Panchkula, was dismissed by the trial Court and so also his appeal by the lower Appellate Court. Aggrieved of the same, the applicant filed RSA No. 597 of 2007, which was also dismissed on December 21, 2007. He has now filed two applications, i.e., one under Order XLVII Rule 1 of the Code of Civil Procedure for review of the judgment dated December 21, 2007 and the other under Order XLI Rule 27 of the Code for permission to adduce additional evidence.

The applicant had remained unsuccessful in the suit for the reason that despite having been given sufficient numbers of opportunities to lead the evidence, he failed to examine any evidence. His evidence was closed by order under Order XVII Rule 3 C.P.C.

Even during the hearing of the second appeal filed by the

applicant, which was dismissed on December 21, 2007, learned counsel representing him had submitted that because of family circumstances, the applicant could not produce the evidence on the dates for which the case was fixed before the learned trial Court. The said argument on behalf of the applicant was not accepted by this Court for the reason that the suit was initially filed on 20.7.1998 and after the issues were framed on 7.4.2003, he was granted a number of opportunities to lead his evidence. For the said purpose, the case was fixed for 18.11.2003, 3.6.2004, 5.8.2004, 9.5.2005 and 14.11.2005. He was given one last opportunity to produce evidence, subject to payment of Rs.500/- as costs but still he failed to produce any evidence. This Court noticed that the case remained pending for about two years and three months before the learned trial Court for the purpose of recording of the plaintiff's evidence but he showed no interest in prosecuting his suit. This Court also considered the explanation of the plaintiff for not examining any evidence that his brother Harish Kumar remained bed-ridden since April 2004, that the wife of Brij Kumar was suffering from liver failure, and, that his own wife was also having a hole in her heart but according to this Court, these were not sufficient enough for the plaintiff in not producing any evidence before the learned trial Court.

By way of review application, the plaintiff has raised two questions, i.e., whether he could be non-suited because of the negligence of his counsel, who did not guide or advise him at the appropriate stage of

the litigation and whether the grounds taken by him in the grounds of appeal were not sufficient to remand the case back to the trial Court for recording his evidence.

Once this Court has already expressed its mind about insufficient explanations given by the applicant regarding non examining of any evidence before the trial Court, it would be inappropriate to hear the applicant-plaintiff afresh on the same grounds. The only remedy available to the applicant is to move the Hon'ble Supreme Court, if so advised.

Similarly, prayer of the applicant for permission to place on record Annexures A-1 to A-4 by way of additional evidence, cannot be granted now, as all these documents were available to him when the matter was pending before the learned trial Court but he failed to examine any witness or produce any such document.

Resultantly, both the applications are dismissed.

(T.P.S. MANN)
JUDGE

July 24, 2009
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